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maintenance of any business avocation on the property fronting on said boulevard." Pursuant to this authority the municipal assembly of St. Louis enacted an ordinance establishing certain boulevards and forbade thereon the following of any business avocation whatever. *Held*, that while such act of the legislature was not a special act it was nevertheless in violation of the Constitution, Art. 2 § 30, declaring that no person shall be deprived of property without due process of law. *City of St. Louis v. Hill*, 116 Mo. 527, 22 S. W. Rep. 861.

Contributory Negligence—Financial Condition of Parents—Charge to the Jury.—*Fox v. Oakland Consol. St. Ry.*, 50 Pac. Rep. 25 (Cal.). In an action against a street railway company for negligently causing the death of a child, the judge of the lower court charged the jury as follows: "The fact that plaintiff is a poor man, if that be true, constitutes no ground why he is entitled to a verdict, but is a matter to be considered by you in determining whether or not he has been guilty of contributory negligence." *Held*, erroneous. The courts have held differently in regard to this question, but to quote from *Mayhew v. Burns*, 113 Ind. 339, 340: "Whether one was negligent or not in a given case must be determined by considering his or her conduct as it related to the particular circumstances of the occasion or affair out of which the case arises." In the case at bar, the contention seemed to be that plaintiff's poverty affected his ability to have the child properly cared for.

CONTRACTS.

Implied Contracts—Statute of Frauds—Rescission.—*Miller v. Roberts*, 47 N. E. Rep. 585 (Mass.). Plaintiff conveyed his farm at the request of the defendant to a third person in consideration of defendant's oral promise to convey to him another farm. Defendant, without plaintiff's consent, sold and conveyed the farm he had agreed to convey to plaintiff to another person, thus making it impossible for him to perform his agreement. *Held*, that defendant was liable for the property conveyed by the plaintiff for his benefit, notwithstanding the agreement by which he received it could not have been enforced by reason of the Statute of Frauds. Where one receives money or property on an executory contract which cannot be enforced by reason of the Statute of Frauds, and he then refuses to perform the contract, he is liable on an implied promise to return the money or pay for the property. *Dix v. Marcy*, 116 Mass. 416; *Root v. Burt*, 118 Mass. 521.

Delivery—What Constitutes.—*People's Nat. Bank v. Freeman's Nat. Bank*, 47 N. E. Rep. 588 (Mass.). Where a sealed package of papers was sent to a collector with a draft attached for collection and with instructions to deliver papers only upon payment of draft, a temporary surrender of the package to the drawee for examination was not a "delivery" within the instructions. The delivery contemplated by the letter of instructions was an absolute one, and could be no other than that which was necessary to be made upon payment of the draft, *i.e.*, a surrender of the package to the drawee as his own property.

Life Insurance—Wager Policy.—*Givens v. Veeder*, 50 Pac. Rep. 316 (N. M.). A assigns to B a life insurance policy for \$5,000 to secure a debt of \$2,000, and B afterwards pays semi-annual premiums, interest, etc., amounting to \$4,500 at the time of the insured's death. A second creditor, C, to whom A had assigned his title in the insurance policy, which he did not possess because

of previous assignment, brings an action to compel B to pay the debt due to him, C. *Held*, that the unconditional assignment of the policy by A to B did not constitute a "wager policy" or "speculative risk." This is not contrary to *Cammack v. Lewis*, 15 Wallace 643, as in that case the amounts of the debt and the assignment were disproportionate.

Rights and Liabilities of Co-Sureties.—*Pile v. McCoy*, 41 S. W. Rep. 1052 (Tenn.). Where one of the sureties of a guardian's bond receives the ward's money from the guardian for his own use, in consequence of which the guardian defaults, he is liable to this co-surety for the entire amount defaulted, especially if he has indemnified himself. This is true although the co-surety may have known and acquiesced in his receiving the money.

MINES.

Mining Claims—Location by Aliens—Subsequent Declaration of Intention.—*Lone Jack Min. Co. v. Megginson*, 82 Fed. Rep. 89. The declaration of an intention to become a citizen by an alien who has located a mining claim on public lands of the United States, made subsequent to his location of the claim, relates back to the time of such location and validates it, in the absence of intermediate adverse claims. Sec. 2319, Rev. St. declares that the mineral lands belonging to the United States shall be open to "occupation and purchase by citizens of the United States and those who have declared their intention to become such." But it has been held that an alien who locates a mining claim on public lands may hold his interest as against all the world, except the United States. *Billings v. Smelting Co.*, 51 Fed. 338. In *Manuel v. Wulff*, 125 U. S. 505, the conveyance of a claim by a qualified locator to an alien operated to transfer the claim to the grantee, "subject to question in regard to his citizenship by the government only." This case cited with approval the ruling in *re Krogstad*, 4 Land Dec. Dep. Int. 564, in which it was held that an alien having made homestead entry, and subsequently declared his intention to become a citizen, the alienage at time of entry would not, in the absence of an adverse claim, defeat the right of purchase. See also *Gouverneur's Heirs v. Robertson*, 11 Wheat. 332, and *Osterman v. Baldwin*, 6 Wall. 116, and the leading article on Mining Law in this issue of the YALE LAW JOURNAL.

Mineral Lands—Trespass.—*Lincoln Lucky Min. Co. v. Hendry*, 50 Pac. Rep. 330 (N. M.). The principle, "*Cujus est solum, hujus est usque ad cælum*," applies to land in general, and it cannot be contended that the rule is different when the lands in controversy are mineral in character, and that while a trespasser may have such possession of the surface of the earth as would enable him to maintain ejectment against a subsequent intruder who entered upon the surface and ousted him, yet that such possession may be insufficient to enable him to maintain ejectment against the same intruder if he enter beneath the surface upon a vein of mineral—and this without reference to the mining laws.

EVIDENCE.

Newly Discovered Evidence—Discovery of Lost Writing.—*Mercer v. King*, 42 S. W. Rep. 106 (Ky.). The finding of a lost writing after an action thereon, in which it was attempted to be proved by secondary evidence and there was a conflict of testimony as to some of its provisions, will entitle the unsuccessful party to a new trial on the ground of newly discovered evidence.